

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Bail Appl..No. 7420 of 2007()

CC.250/2007 of J.M.F.C.,KUNNAMANGALAM
CRIME NO.54/07 OF KUNNAMANGALAM POLICE STATION
.....

PETITIONER

K.K.MUHAMMED MALIK, S/O.ABOOBACKER,
KURUKKAKUNNUMMAL, ANAPPARA, P.O.KUNNAMANGALAM,
KOZHIKODE.

BY ADV. SRI.A.RANJITH NARAYANAN
SRI.S.K.SAJU

RESPONDENTS:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,

BY P.P. SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 4/12/07 , THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

B.A.NO. 7420 OF 2007

Dated this the 4th day of December, 2007

ORDER

Application for anticipatory bail. The petitioner is the husband of the de facto complainant. The petitioner faces allegations of matrimonial cruelty of the culpable variety punishable, inter alia, under Sec.498A of the IPC. Investigation is complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Calendar Case has been registered. Coercive processes have been issued against the petitioner. The petitioner went before the learned Sessions Judge seeking anticipatory bail. His application for anticipatory bail was dismissed by the learned Sessions Judge. The petitioner has come to this Court with a prayer that directions under Sec.438 and/or Sec.482 of the

Cr.P.C. may be issued in his favour.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His omission/failure to appear before the police/the learned Magistrate was not wilful or deliberate. He is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously.

3. The learned counsel for the petitioner further submits that inasmuch as his earlier application for anticipatory bail was dismissed by the learned Sessions Judge, he apprehends that the learned Magistrate may not consider his application for regular bail favourably.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor only submits that the petitioner may be directed to surrender before the learned Magistrate and seek regular bail in the ordinary course.

5. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary and another v. State of Bihar** (AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued

by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

6. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. The mere fact that the application for anticipatory bail has been dismissed is no reason for the learned Magistrate not to consider the application for regular bail on merits. The learned Magistrate must certainly take note of the fact that totally different considerations must weigh with the court while considering the prayer for invocation of the discretion under Sec.438 of the Cr.P.C. While considering the application for regular bail, consideration relevant under Sec.437 of the Cr.P.C. must appeal to the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits, in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy**

B.A.NO. 7420 OF 2007 -: 4 :-

Superintendent of Police (2003 (1) KLT 339).

7. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge